

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Chester Lee Grauberger,

Civil No. 10-3004 (DWF/SER)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Warden Becky Dooley,

Respondent.

Chester Lee Grauberger, *Pro Se*, Petitioner.

Kimberly R. Parker and Matthew Frank, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for Respondent.

This matter is before the Court upon Petitioner Chester Lee Grauberger's ("Petitioner") objections (Doc. No. 22) to Magistrate Judge Steven E. Rau's June 7, 2011 Report and Recommendation (Doc. No. 21) insofar as it recommends that Petitioner's Petition for Habeas Corpus Relief be denied and that this action be dismissed with prejudice. Respondent Warden Becky Dooley (the "State") filed a response to Petitioner's objections concurring with Magistrate Judge Rau's June 7, 2011 Report and Recommendation. (Doc. No. 24.) Petitioner replied to the State's response. (Doc. No. 28.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local

Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

The Court has carefully reviewed Petitioner's detailed objections to the Report and Recommendation, as well as Petitioner's arguments in his reply to the State's response to his objections. The Court concludes that Petitioner does not assert any grounds that warrant a departure from the Report and Recommendation. In particular, the Court concludes that Magistrate Judge Rau correctly determined that Petitioner's habeas claims were untimely and that tolling of the statute of limitations did not apply.

First, many of Petitioner's objections relate to the Magistrate Judge's discussion of the facts in the background section of the Report and Recommendation, but do not implicate the Magistrate Judge's legal analysis. Second, most of Petitioner's claims are based on alleged errors at trial and therefore were known to Petitioner at the time of his direct appeal. In the same vein, many of the grounds raised in the petition were raised by Petitioner in his direct appeal or other post-conviction proceedings. Finally, several objections touch on Petitioner's core objection, which relates to the assertion that the prosecutor withheld or altered evidence. Namely, Petitioner asserts that the prosecutor altered transcripts and suppressed evidence of a bloody handprint so as to entitle Petitioner to toll the statute of limitations. However, as explained by Magistrate Judge Rau, these claims are untimely and properly dismissed because the existence of the allegedly withheld evidence was either known of or should have been known of at the time of trial or, with

respect to the bloody handprint, the evidence was revealed during oral arguments in Petitioner's post-conviction proceedings in 2000. For these reasons, the Petition of Habeas Corpus Relief is properly denied.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Chester Lee Grauberger's objections (Doc. No. [22]) to Magistrate Judge Steven E. Rau's June 7, 2011 Report and Recommendation (Doc. No. [21]) are **OVERRULED**.

2. Magistrate Judge Steven E. Rau's June 7, 2011 Report and Recommendation (Doc. No. [21]) is **ADOPTED**.

3. Petitioner's Petition for Habeas Corpus Relief (Doc. No. [1]) is **DENIED**.

4. This action is **DISMISSED WITH PREJUDICE**.

5. Petitioner is not granted a Certificate of Appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 27, 2011

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge